IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 516 OF 1990

The State of Maharashtra)
(Through The Special Land)
Acquisition Officer, Metro)
Centre No.IV, Panvel) ...Appellant.

V/s

Shri Balaram Parshuram Patil,)
Adult, R/o. Rohinjan, Tal.)
Panvel.) ...Respondent.

Mr. A.R. Patil, AGP for the appellant.

Mr. S.P. Thorat for the respondent.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 19th August, 2005.

ORAL JUDGMENT: (Per R.M. S KHANDEPARKAR, J.)

1. Heard the learned advocate for the parties.

Perused the records.

2. The appellant challenges the Judgment and Order dated 04/05/1989 passed by the Civil Judge, Senior Division, Raigad, Alibag whereby the reference filed by respondent under section 18 of the Land Acquisition Act, 1894 has been allowed and the compensation has been enhanced from Rs 15,097/- to Rs 95,600/-.

3. The land in question belonging to the respondent was sought to be acquired by issuing notification under section 4 of the said Act on 03/02/1970 and an award was passed after hearing the party on 01/11/1985. The possession of the land was taken over by the appellant on 01/11/1985 on payment of compensation which was accepted by the respondent under protest and he preferred an application under section 18 for enhancement of the same.

4. The Reference Court, after allowing the parties to lead evidence, on consideration thereof, enhanced the compensation as stated above.

5. The learned Assistant Government Pleader appearing for the appellant while assailing the impugned judgment stated that the Reference Court while rightly rejected the evidence produced by the respondent in the form of sale deeds, but erred in relying upon the decisions in earlier Reference Application Nos. 31 of 1986 and 309 of 1987 without ascertaining as to whether the land which was the subject matter of acquisition under those proceedings was comparable with the land in question or not and whether both the pieces of land were similar in nature.

6. Upon hearing the learned Assistant Government Pleader for the appellant and on perusal of the record, the only point which arises for consideration is whether the Reference Court was justified in enhancing the compensation at the rate it has enhanced, solely on the basis of the judgments of the Reference Court in LAR No.31 of 1986 and 309 of 1987, without considering the issue of comparability of the land?

7. A bare perusal of the impugned judgment discloses that the Reference Court, after taking note of the judgments passed in LAR No. 31 of 1986 and 309 of 1987 wherein compensation was awarded at different rates from Rs 8/- per sq. meters to Rs 15/- per sq. meter depending upon different classes of land which was acquired, and referring to the description of the land in question, has arrived at the conclusion that it would be just and appropriate to determine the market value of the land in question at the rate of Rs 8/- per sq. meter. Undoubtedly, para 16 of the impugned judgment deals with the location and description of the land in question which has been the

subject matter of the acquisition in the case in hand. However, there is no reference to the description of the land which was the subject matter of the acquisition proceedings in cases before the Reference Court bearing LAR No. 31 of 1986 and 309 of 1987. The Apex Court in Cement Corporation of India Ltd. vs. Purya and others etc. etc. reported in **2004 AIR SCW 5534** has clearly laid down the law on the point that the Reference Court can certainly take note of the sale instances as well as the earlier judgments in relation to the land in the locality as well as even in different locality for ascertaining the market value of the land under consideration provided that the Reference Court analyses the comparability between the land under consideration with the land which was the subject matter of the sale deeds or the earlier judgments. The procedure of merely accepting the certified copy of the sale deed or of the judgment in earlier case and based thereon with an arithmetical calculation arriving at the market value of the land under consideration has been condemned by the Apex Court while insisting for necessity of considering the evidentiary value of such evidence in the form of either sale deeds or earlier judgments and, in that regard, it has clearly observed that the Reference Court has to take into consideration the nature of the

land and various other factors in relation to the land in question and compare the same with the subject matter of the sale deeds or judgments which are sought to be relied upon. Plain reading of the impugned judgment, as already observed earlier, clearly discloses the failure on the part of the Reference Court to undertake any such exercise before arriving at the finding that the market value of the land in question would be Rs 8/- per sq. meter. Obviously, therefore, the Reference Court by mere arithmetical calculation has held the market value of the land in question to be Rs 8/- per sq. meter without considering as to whether the land in question can be in any manner comparable with the land which was the subject matter of the proceedings in LAR No. 309 of 1987 and 31 of 1986. Clearly, the impugned judgment is in contravention of the law laid down by the Apex Court in that regard and, therefore, cannot be sustained and is liable to be quashed and set aside while restoring the amount of compensation which was awarded by the Land Acquisition Officer.

8. For the reasons stated above, therefore, point for determination formulated above is answered in negative and the appeal is allowed and the impugned award is hereby set aside while restoring the compensation

awarded by the Land Acquisition Officer under the first award. There shall be no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)